

**ASSEMBLY BILL**

**No. 1099**

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**Introduced by Assembly Member Fong**

February 22, 2013

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An act to amend Section 67302 of the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as introduced, Fong. Public postsecondary education: disabled student services.

Existing law requires publishers, as defined, and manufacturers of printed instructional material, including digital open source textbooks if and when the California Open Source Library is established, for use at public postsecondary educational institutions, to provide the material, upon request, in an electronic format that is compatible with commonly used braille translation and speech synthesis software, when those materials are to be used by a student whose disability prevents him or her from using standard instructional materials and other requirements are met.

Existing law also requires publishers and manufacturers to provide computer files or other electronic versions of nonprinted instructional materials, as defined, to include materials that require the availability of electronic equipment in order to be utilized, when technology is available to convert those nonprinted materials to a format that is compatible with braille translation or speech synthesis software.

Existing law also requires the governing boards of the California Community Colleges, the California State University, and the University of California to adopt guidelines consistent with this provision for its implementation and administration.

The bill would make nonsubstantive changes in this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 67302 of the Education Code, as amended  
2 by Section 1 of Chapter 239 of the Statutes of 2009, is amended  
3 to read:

4 67302. (a) An individual, firm, partnership, or corporation  
5 that publishes or manufactures printed instructional materials for  
6 students attending the University of California, the California State  
7 University, or a California Community College, shall provide to  
8 the university, college, or particular campus of the university or  
9 college, for use by students attending the University of California,  
10 the California State University, or a California Community College,  
11 any printed instructional material in an electronic format mutually  
12 agreed upon by the publisher or manufacturer and the college or  
13 campus. Computer files or electronic versions of printed  
14 instructional materials shall maintain the structural integrity of the  
15 printed instructional material, be compatible with commonly used  
16 braille translation and speech synthesis software, and include  
17 corrections and revisions as may be necessary. The computer files  
18 or electronic versions of the printed instructional material shall be  
19 provided to the university, college, or particular campus of the  
20 university or college at no additional cost and in a timely manner,  
21 upon receipt of a written request that does all of the following:

22 (1) Certifies that the university, college, or particular campus  
23 of the university or college has purchased the printed instructional  
24 material for use by a student with a disability or that a student with  
25 a disability attending or registered to attend that university, college,  
26 or particular campus of the university or college has purchased the  
27 printed instructional material.

28 (2) Certifies that the student has a disability that prevents him  
29 or her from using standard instructional materials.

30 (3) Certifies that the printed instructional material is for use by  
31 the student in connection with a course in which he or she is  
32 registered or enrolled at the university, college, or particular  
33 campus of the university or college.

1 (4) Is signed by the coordinator of services for students with  
2 disabilities at the university, college, or particular campus of the  
3 university or college or by the campus or college official  
4 responsible for monitoring compliance with the Americans with  
5 Disabilities Act of 1990 (42 U.S.C. *Sec.* 12101 et seq.) at the  
6 university, college, or particular campus of the university or  
7 college.

8 (b) An individual, firm, partnership, or corporation specified in  
9 subdivision (a) may also require that, in addition to the conditions  
10 enumerated above, the request shall include a statement signed by  
11 the student agreeing to both of the following:

12 (1) He or she will use the electronic copy of the printed  
13 instructional material in specialized format solely for his or her  
14 own educational purposes.

15 (2) He or she will not copy or duplicate the printed instructional  
16 material for use by others.

17 (c) If a college or university permits a student to directly use  
18 the electronic version of an instructional material, the disk or file  
19 shall be copy-protected, or the college or university shall take other  
20 reasonable precautions to ensure that students do not copy or  
21 distribute electronic versions of instructional materials in violation  
22 of the Copyright-~~Revisions~~ *Revision* Act of 1976, as amended (17  
23 U.S.C. *Sec.* 101 et seq.).

24 (d) An individual, firm, partnership, or corporation that publishes  
25 or manufactures nonprinted instructional materials for students  
26 attending the University of California, the California State  
27 University, or a California Community College shall provide  
28 computer files or other electronic versions of the nonprinted  
29 instructional materials for use by students attending the University  
30 of California, the California State University, or a California  
31 Community College, subject to the same conditions set forth in  
32 subdivisions (a) and (b) for printed instructional materials, when  
33 technology is available to convert these nonprinted instructional  
34 materials to a format that maintains the structural integrity of the  
35 nonprinted instructional materials that is compatible with braille  
36 translation and speech synthesis software.

37 (e) For purposes of this section:

38 (1) "Instructional material or materials" means textbooks and  
39 other materials written and published primarily for use by students  
40 in postsecondary instruction that are required or essential to a

1 student's success in a course of study in which a student with a  
2 disability is enrolled. The determination of which materials are  
3 "required or essential to student success" shall be made by the  
4 instructor of the course in consultation with the official making  
5 the request pursuant to paragraph (4) of subdivision (a) in  
6 accordance with guidelines issued pursuant to subdivision (i).  
7 "Instructional material or materials" does not include nontextual  
8 mathematics and science materials until the time software becomes  
9 commercially available that permits the conversion of existing  
10 electronic files of the materials into a format that is compatible  
11 with braille translation software or alternative media for students  
12 with disabilities.

13 (2) "Printed instructional material or materials" means  
14 instructional material or materials in book or other printed form.

15 (3) "Nonprinted instructional materials" means instructional  
16 materials in formats other than print, and includes instructional  
17 materials that require the availability of electronic equipment in  
18 order to be used as a learning resource, including, but not  
19 necessarily limited to, software programs, videotapes and  
20 audiotapes.

21 (4) "Structural integrity" means all of the printed instructional  
22 material, including, but not limited to, the text of the material,  
23 sidebars, the table of contents, chapter headings and subheadings,  
24 footnotes, indexes, glossaries, and bibliographies. "Structural  
25 integrity" need not include nontextual elements such as pictures,  
26 illustrations, graphs, or charts. If good faith efforts fail to produce  
27 an agreement pursuant to subdivision (a) between the publisher or  
28 manufacturer and the university, college, or particular campus of  
29 the university or college, as to an electronic format that will  
30 preserve the structural integrity of the printed instructional material,  
31 the publisher or manufacturer shall provide the instructional  
32 material in ASCII text and shall preserve as much of the structural  
33 integrity of the printed instructional material as possible.

34 (5) "Specialized format" means braille, audio, or digital text  
35 that is exclusively for use by blind or other persons with  
36 disabilities.

37 (f) Nothing in this section shall be construed to prohibit a  
38 university, college, or particular campus of the university or college  
39 from assisting a student with a disability by using the electronic  
40 version of printed instructional material provided pursuant to this

1 section solely to transcribe or arrange for the transcription of the  
2 printed instructional material into braille. In the event a  
3 transcription is made, the campus or college shall have the right  
4 to share the braille copy of the printed instructional material with  
5 other students with disabilities.

6 (g) The Chancellor of the California Community Colleges, the  
7 Chancellor of the California State University, and the President  
8 of the University of California may each establish one or more  
9 centers within their respective segments to process requests for  
10 electronic versions of instructional materials pursuant to this  
11 section. If a segment establishes a center or centers, and a college  
12 or campus within the jurisdiction of the center chooses to  
13 participate in the center, each of the following shall apply:

14 (1) A college or campus designated as within the jurisdiction  
15 of a center shall submit requests for instructional material made  
16 pursuant to subdivision (a) to the center, which shall transmit the  
17 request to the publisher or manufacturer.

18 (2) If there is more than one center, each center shall make every  
19 effort to coordinate requests within its segment.

20 (3) The publisher or manufacturer of instructional material shall  
21 be required to honor and respond to only those requests submitted  
22 through a designated center.

23 (4) If a publisher or manufacturer has responded to a request  
24 for instructional materials by a center, or on behalf of all the centers  
25 within a segment, all subsequent requests for these instructional  
26 materials shall be satisfied by the center to which the request is  
27 made.

28 (h) Nothing in this section shall be deemed to authorize any use  
29 of instructional materials that would constitute an infringement of  
30 copyright under the Copyright Revision Act of 1976, as amended  
31 (17 U.S.C. Sec. 101 et seq.).

32 (i) ~~The governing boards~~ *Board of Governors* of the California  
33 Community Colleges, the *Trustees of the* California State  
34 University, and the *Regents of the* University of California shall  
35 each adopt guidelines consistent with this section for its  
36 implementation and administration. At a minimum, the guidelines  
37 shall address all of the following:

38 (1) The designation of materials deemed “required or essential  
39 to student success.”

(2) The determination of the availability of technology for the conversion of nonprinted materials pursuant to subdivision (d) and the conversion of mathematics and science materials pursuant to paragraph ~~(4)~~ (5) of subdivision (e).

(3) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (a) and (b).

(4) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(j) Failure to comply with the requirements of this section shall be a violation of Section 54.1 of the Civil Code.

(k) This section does not apply to a request by an institution for a captioned format, as defined in paragraph (1) of subdivision (a) of Section 67302.5, of an instructional material, as defined in paragraph (4) of subdivision (a) of Section 67302.5.

SEC. 2. Section 67302 of the Education Code, as amended by Section 3 of Chapter 621 of the Statutes of 2012, is amended to read:

67302. (a) (1) An individual, firm, partnership, or corporation that publishes or manufactures printed instructional materials for students attending the University of California, the California State University, or a California Community College, shall provide to the university, college, or particular campus of the university or college, for use by students attending the University of California, the California State University, or a California Community College, any printed instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the college or campus. Computer files or electronic versions of printed instructional materials shall maintain the structural integrity of the printed instructional material, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary. The computer files or electronic versions of the printed instructional material shall be provided to the university, college, or particular campus of the university or college at no additional cost and in a timely manner, upon receipt of a written request that does all of the following:

(A) Certifies that the university, college, or particular campus of the university or college has purchased the printed instructional material for use by a student with a disability or that a student with a disability attending or registered to attend that university, college, or particular campus of the university or college has purchased the

1 printed instructional material. The requirements of this  
2 subparagraph shall be satisfied if the instructional material consists  
3 of a digital open source textbook or related materials developed  
4 or acquired pursuant to Section 66409.

5 (B) Certifies that the student has a disability that prevents him  
6 or her from using standard instructional materials.

7 (C) Certifies that the printed instructional material is for use by  
8 the student in connection with a course in which he or she is  
9 registered or enrolled at the university, college, or particular  
10 campus of the university or college.

11 (D) Is signed by the coordinator of services for students with  
12 disabilities at the university, college, or particular campus of the  
13 university or college or by the campus or college official  
14 responsible for monitoring compliance with the Americans with  
15 Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) at the  
16 university, college, or particular campus of the university or  
17 college.

18 (2) If and when the California Open Source Digital Library is  
19 established pursuant to statute, the request described in paragraph  
20 (1) shall be submitted to, and satisfied by, the library where the  
21 instructional material needed by a student with a disability is  
22 available from that library.

23 (b) An individual, firm, partnership, or corporation specified in  
24 subdivision (a) may also require that, in addition to the conditions  
25 enumerated above, the request shall include a statement signed by  
26 the student agreeing to both of the following:

27 (1) He or she will use the electronic copy of the printed  
28 instructional material in specialized format solely for his or her  
29 own educational purposes.

30 (2) He or she will not copy or duplicate the printed instructional  
31 material for use by others.

32 (c) If a college or university permits a student to directly use  
33 the electronic version of an instructional material, the disk or file  
34 shall be copy-protected, or the college or university shall take other  
35 reasonable precautions to ensure that students do not copy or  
36 distribute electronic versions of instructional materials in violation  
37 of the Copyright-~~Revisions~~ *Revision* Act of 1976, as amended (17  
38 U.S.C. Sec. 101 et seq.).

39 (d) An individual, firm, partnership, or corporation that publishes  
40 or manufactures nonprinted instructional materials for students

1 attending the University of California, the California State  
2 University, or a California Community College shall provide  
3 computer files or other electronic versions of the nonprinted  
4 instructional materials for use by students attending the University  
5 of California, the California State University, or a California  
6 Community College, subject to the same conditions set forth in  
7 subdivisions (a) and (b) for printed instructional materials, when  
8 technology is available to convert these nonprinted instructional  
9 materials to a format that maintains the structural integrity of the  
10 nonprinted instructional materials that is compatible with braille  
11 translation and speech synthesis software.

12 (e) For purposes of this section:

13 (1) “Instructional material or materials” means textbooks and  
14 other materials written and published primarily for use by students  
15 in postsecondary instruction, including, but not limited to, digital  
16 open source textbooks and related materials developed or acquired  
17 pursuant to Section 66409, that are required or essential to a  
18 student’s success in a course of study in which a student with a  
19 disability is enrolled. The determination of which materials are  
20 “required or essential to student success” shall be made by the  
21 instructor of the course in consultation with the official making  
22 the request pursuant to *subparagraph (D) of paragraph-(4) (1)* of  
23 subdivision (a) in accordance with guidelines issued pursuant to  
24 subdivision (i). “Instructional material or materials” does not  
25 include nontextual mathematics and science materials until the  
26 time software becomes commercially available that permits the  
27 conversion of existing electronic files of the materials into a format  
28 that is compatible with braille translation software or alternative  
29 media for students with disabilities.

30 (2) “Nonprinted instructional materials” means instructional  
31 materials in formats other than print, and includes instructional  
32 materials that require the availability of electronic equipment in  
33 order to be used as a learning resource, including, but not  
34 necessarily limited to, software programs, videotapes and  
35 audiotapes.

36 (3) “Printed instructional material or materials” means  
37 instructional material or materials in book form or other printed  
38 form.



1 (4) “Specialized format” means braille, audio, or digital text  
2 that is exclusively for use by blind persons or other persons with  
3 disabilities.

4 (5) “Structural integrity” means all of the printed instructional  
5 material, including, but not limited to, the text of the material,  
6 sidebars, the table of contents, chapter headings and subheadings,  
7 footnotes, indexes, glossaries, and bibliographies. “Structural  
8 integrity” need not include nontextual elements such as pictures,  
9 illustrations, graphs, or charts. If good-faith efforts fail to produce  
10 an agreement pursuant to subdivision (a) between the publisher or  
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12 the university or college, as to an electronic format that will  
13 preserve the structural integrity of the printed instructional material,  
14 the publisher or manufacturer shall provide the instructional  
15 material in ASCII text and shall preserve as much of the structural  
16 integrity of the printed instructional material as possible.

17 (f) Nothing in this section shall be construed to prohibit a  
18 university, college, or particular campus of the university or college  
19 from assisting a student with a disability by using the electronic  
20 version of printed instructional material provided pursuant to this  
21 section solely to transcribe or arrange for the transcription of the  
22 printed instructional material into braille. In the event a  
23 transcription is made, the campus or college shall have the right  
24 to share the braille copy of the printed instructional material with  
25 other students with disabilities.

26 (g) The Chancellor of the California Community Colleges, the  
27 Chancellor of the California State University, and the President  
28 of the University of California may each establish one or more  
29 centers within their respective segments to process requests for  
30 electronic versions of instructional materials pursuant to this  
31 section. If a segment establishes a center or centers, and a college  
32 or campus within the jurisdiction of the center chooses to  
33 participate in the center, each of the following shall apply:

34 (1) A college or campus designated as within the jurisdiction  
35 of a center shall submit requests for instructional material made  
36 pursuant to subdivision (a) to the center, which shall transmit the  
37 request to the publisher or manufacturer.

38 (2) If there is more than one center, each center shall make every  
39 effort to coordinate requests within its segment.

1 (3) The publisher or manufacturer of instructional material shall  
2 be required to honor and respond to only those requests submitted  
3 through a designated center.

4 (4) If a publisher or manufacturer has responded to a request  
5 for instructional materials by a center, or on behalf of all the centers  
6 within a segment, all subsequent requests for these instructional  
7 materials shall be satisfied by the center to which the request is  
8 made.

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12 (17 U.S.C. Sec. 101 et seq.).

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15 University, and the *Regents of the* University of California shall  
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22 conversion of nonprinted materials pursuant to subdivision (d) and  
23 the conversion of mathematics and science materials pursuant to  
24 paragraph ~~(4)~~ (5) of subdivision (e).

25 (3) The procedures and standards relating to distribution of files  
26 and materials pursuant to subdivisions (a) and (b).

27 (4) Other matters as are deemed necessary or appropriate to  
28 carry out the purposes of this section.

29 (j) Failure to comply with the requirements of this section shall  
30 be a violation of Section 54.1 of the Civil Code.

31 (k) This section does not apply to a request by an institution for  
32 a captioned format, as defined in paragraph (1) of subdivision (a)  
33 of Section 67302.5, of an instructional material, as defined in  
34 paragraph (4) of subdivision (a) of Section 67302.5.